

REMARKS/ARGUMENTS

This Amendment is responsive to the final Office action dated November 16, 2007, setting forth a shortened three month statutory period for reply with a one month extension of time expiring on March 16, 2008. Since March 16, 2008 fell on a Sunday, this response is submitted on Monday, March 17, 2008, and is submitted with a petition for a one month extension of time and a request for continued examination. After entry of this Response, claims 1-12, 14-34, and 62 remain pending in this application, with claim 1 being an independent claim, claim 13 cancelled herein and claims 35-61 and 63-64 previously cancelled.

I. Claim Rejections under 35 U.S.C. § 102

Claims 1-4, 9, 13-16, 18-34, and 62 are rejected under 35 U.S.C. § 102(b) as anticipated by U.S. patent No. 5,930,775 issued to McCauley et al. (hereinafter "McCauley et al."). For at least the following reasons, the Assignee respectfully submits that the claims are patentable over McCauley. Claim 1 is an independent claim, from which the other rejected claims depend directly or indirectly. An anticipation rejection requires that each limitation of a rejected claim be disclosed by a single prior art reference. At least two limitations of independent claim 1 are not taught by McCauley.

a. McCauley does not disclose obtaining an estimated liquidation time between a last interest paid date for the loan and a receipt of the net proceeds from the sale of the property, wherein the operation of obtaining an estimated liquidation time includes applying a liquidation time value decision tree.

McCauley does not involve providing an estimate of the liquidation time between a last interest paid date for a loan and the receipt of the net proceeds from the sale of the property associated with the loan "wherein the operation of obtaining an estimated liquidation time includes applying a liquidation time value decision tree" as set forth in amended claim 1. This limitation was originally set forth in claim 13, which is now cancelled. The Office action relies on various sections of McCauley as disclosing the recited limitation, none of which are sufficient.

To the extent McCauley may disclose any aspect of obtaining an estimated liquidation time, McCauley discusses using "a table in loan experience database for historical average fees and costs for the state in which the property is located" as part of estimated foreclosure fees and costs. See *McCauley*, col. 8, line 22-25. Additionally, McCauley references the use of an average time to obtain foreclosure timing information. See *McCauley* col. 8, line 39-42 ("the average time a loan takes to foreclose in New Jersey is about 500 days"). Hence, in the REO

case, McCauley does not disclose obtaining an estimated liquidation time using a liquidation time value decision tree. Rather, McCauley discusses accessing a database to obtain historical average foreclosure timing for a geographic region.

In the short payoff, deed-in-lieu, charge off and loan modification cases, “the system estimates the date on which these fees and costs [of foreclosure] will stop accruing. For a short payoff, for example, the system projects, using information in loan experience database 352, that it will typically take 45 days from approval for the deal to close. The system then prorates the fees and costs using the number of days the loan will actually have been in foreclosure relative to the historical average time a loan in that state would spend in foreclosure.”

McCauley, col. 8, lines 28-32. McCauley is silent as to how the 45 day number is obtained besides indicating the “use of information in the database.” McCauley does not disclose the use of a decision tree to obtain liquidation timing for short payoff, deed-in-lieu, charge off and loan modification cases. Moreover, the use of a liquidation decision tree is not inherent to McCauley because McCauley could simply and likely uses historical timing values as is taught with the case of foreclosure timing.

Accordingly, for at the least these reasons, McCauley does not disclose each and every limitation of claim 1 and cannot therefore anticipate claim 1 under 35 U.S.C. § 102.

b. McCauley does not yield the estimated financial outcome for a pool of loans.

McCauley provides no comprehensive assessment of a pool of loans. McCauley is only concerned with assessment of an individual nonperforming loan to assess options for the loan. Accordingly, McCauley does not “yield the estimated financial outcome for the pool [of loans]” as required by claim 1. In paragraph 42 of the final Office action, the Examiner indicates that the limitation was not given patentable weight because it occurs in the preamble. It is noted, however, that the recited limitation occurs in the preamble as well as the last limitation of the body of claim 1.

Nonetheless, to highlight how claim 1 involves estimating a financial outcome for a *pool of loans* and to further emphasize how claim 1 is patentable over McCauley, claim 1 has been amended to include the limitations of “executing the preceding operations of obtaining an estimated value, obtaining an estimated net proceeds, obtaining an estimated liquidation time, obtaining an estimated total debt, and deriving the difference for a plurality of additional loans from the pool of loans.” Hence, the operations of claim 1 are repeated for a plurality of loans in the pool, although not necessarily all of the loans in the pool. Additionally, claim 1 has been

amended to include "applying the estimated financial outcome from the sale of the property associated with the loan and the plurality of additional loans to yield the estimated financial outcome for the pool." (underlining indicating the additional language of this limitation).

The Office action relies on Fig. 6 and the Abstract to disclose this limitation. Fig. 6, however, is an analysis sheet for a single loan associated with loan number 789789769 (see upper left hand corner). Figure 6 provides no discussion of providing an estimated financial outcome for a pool of loans. Similarly, the Abstract provides no such discussion.

Fundamentally, McCauley is concerned with "a comprehensive decision making tool for lenders to select the optimal business plan for nonperforming loans. This is accomplished by generating models for each alternative available to the lender for a nonperforming loan consistent with information on conditions related to the loan and the borrower's financial position. There is a model for each of the foreclosure, short payoff, deed-in-lieu of loan, write off (also known as a "charge off"), and loan modification options." Thus, McCauley is concerned with analyzing a particular individual nonperforming loan under a variety of different scenarios to determine the financially optimal plan for that particular loan.

McCauley is not concerned with "applying the estimated financial outcome from the sale of the property associated with the loan and the plurality of additional loans to yield the estimated financial outcome for the pool." Accordingly, for this additional reason, McCauley does not disclose each and every limitation of claim 1 and cannot therefore anticipate claim 1 under 35 U.S.C. § 102.

All of the other claims rejected under 35 U.S.C. § 102 depend from and include all of the same limitations as independent claim 1, and are rejected under McCauley. Accordingly, for at least the same reasons as independent claim 1, McCauley does not anticipate claims 2-4, 9, 13-16, 18-34, and 62.

For the reasons set forth above, it is respectfully submitted that claims 1-4, 9, 13-16, 18-34, and 62 are patentable under 35 U.S.C. § 102 over McCauley, in form for allowance, and such indication is respectfully suggested.

II. Claim Rejections under 35 U.S.C. § 103

Claims 5-8 and 10-12 are rejected under 35 U.S.C. § 103(a) as unpatentable over McCauley et al. in view of U.S. patent publication No. 2002/0059136 A1 to May (hereinafter "May"). For at least the following reasons, Assignee respectfully disagrees with these

rejections. The rejection of these claims relies on basis of rejecting claim 1 under McCauley. Each of these claims depend from and include the limitations of independent claim 1. Accordingly, it is respectfully submitted that these claims are not rendered obvious by the combination of McCauley and May as the combination does not disclose or suggest all of the limitations of the claims.

For the reasons set forth above, it is respectfully submitted that claims 5-8 and 10-12 are patentable under 35 U.S.C. § 103 over the combination of McCauley and May, in form for allowance, and such indication is respectfully suggested.

III. Conclusion

After review and consideration of the above arguments, claims 1-12, 14-34, and 62 remain in the application. In accordance with the arguments set forth herein, the Assignee respectfully submits the application and all pending claims are in condition for allowance and requests such prompt allowance.

A petition for a one month extension of time and Request for Continued Examination ("RCE") accompany this Amendment and Response. Accordingly, please charge Deposit Account number 04-1415 in the amount of \$930.00 for the one month extension of time and the RCE fee. The Assignee believes no further fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415.

If the Examiner should require any additional information or amendment, please contact the undersigned attorney.

Respectfully submitted,

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By


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